

IT 95-90

Tax Type: INCOME TAX

Issue: Income Earned In Illinois/Individual Residency

STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS

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THE DEPARTMENT OF REVENUE      )      Docket No.
OF THE STATE OF ILLINOIS      )      SSN
      v.                      )
TAXPAYER                      )      John E. White,
      Taxpayer                )      Administrative Law Judge
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before the Department of Revenue's ("Department's") Office of Administrative Hearings as the result of Taxpayer's ("taxpayer's") protest of the Notice of Deficiency ("NOD"), issued by the Department against taxpayer on 2/8/95. The basis of the NOD was the Department's determination that taxpayer failed to file a return for tax year ending 1992.

FINDINGS OF FACT:

1. After receiving information from the Internal Revenue Service ("IRS"), the Department issued an amended Notice of Deficiency ("NOD") against taxpayer based on an adjusted gross income of \$9759.00, as determined by the IRS. See NOD, File Ex. No. 1.

2. Taxpayer filed a protest, in which she admitted liability, and requested an abatement of penalties and interest. Protest, File Ex. No. 2.

3. Taxpayer did not request a hearing. See id.

CONCLUSIONS OF LAW: Pursuant to 904(a) of the IITA, a Notice of Deficiency is prima facie evidence of the correctness of the amount of tax and penalties due. 35 ILCS 5/904(a). Taxpayer does not dispute the amount of tax assessed, and the documentary evidence shows that taxpayer received taxable income while residing in Illinois in 1992. See File Ex. Nos. 1, 2.

Therefore, I recommend that the Director finalize the amount of tax proposed in the NOD.

In addition, the NOD proposed the assessment of a penalty for taxpayer's failure to file an Illinois income tax return for 1992, and for her failure to pay the entire tax liability by the due date. See 35 ILCS 5/1001; 35 ILCS 5/1005. Penalties imposed under those provisions, however, shall not apply if the failure was due to reasonable cause. 35 ILCS 735/3-8. The existence of reasonable cause justifying abatement of a penalty is a factual determination that can only be decided on a case by case basis. See *Rorabaugh v. United States*, 611 F.2d 211 (7th Cir. 1979); *Dumont Ventilation Co. v. Dept. of Revenue*, 99 Ill. App. 3d 263 (3d Dist. 1987). Here, taxpayer failed to tender any documentary evidence showing reasonable cause for her failure to file the return or pay the tax when due. I, therefore, recommend that the Director finalize the Notice of Deficiency as issued.

Administrative Law Judge

Date Entered